The precise point raised in the principal case apparently had never been passed upon definitely by an English court prior to this time. The counsel for the appellant urged that the rule applicable to criminal trials should govern the decision of this, a civil case. To quote from a recent leading case that rule is as follows: "If a juror after the judge has summed up in any criminal trial separates from his colleagues, and not being under the control of the court, converses or is in a position to converse with other persons, it is an irregularity which in the opinion of the court renders the whole proceedings abortive, and the only course open to the court is to discharge the jury and commence the proceedings afresh." *Rex.* v. *Ketteridge,* [1915] 1 K. B. 467. The court deciding that case did not think it necessary to consider what had actually taken place, nor whether the irregularity had in fact prejudiced the prisoner. However, there was in that case no suggestion that this same rule would apply in the case of a civil trial. While, as stated above, this precise question was treated by the court as one of first impression, there is strong evidence that at an early date the strict rule applicable to criminal cases was relaxed under some circumstances insofar as civil trials were concerned. COKE, LITTLETON, *227*; 3 BLACKSTONE, COMM., 377; *Lord St. John* v. *Abbott,* Barnes 441, 94 Eng. Rep. 994. The principal case states definitely for the first time that "the rule is that when there has been a separation, that is a circumstance which with other circumstances ought to be taken into account and dealt with by the court." In the United States the general rule is that a separation in civil trials must be prejudicial to invalidate the verdict, even when the separation takes place before the jury have arrived at a verdict. *Spencer* v. *Johnson,* 185 Mich. 85, 151 N. W. 684; *Liverpool &c. Ins. Co.* v. *N. & M. Friedman Co.,* 133 Fed. 713, 66 C. C. A. 543. It thus appears that the English Court of Appeal, without referring in any way to American decisions, has reached a conclusion identical with the rule which has always been in force in this country.

WILLS—EFFECT OF REVOCATION UPON FAILURE OF THE PURPOSE FOR WHICH IT WAS MADE.—Under a marriage settlement for her life, with remainder as she should appoint, testatrix made an appointment for the benefit of her daughter, M., then later by codicil expressly revoked the same, and made a new appointment whereby the fund was to be held in trust for the benefit of the said M., for life, then to such other daughters of testatrix as should survive M. The new appointment in the codicil was void under the rule against perpetuities, and M. now seeks to determine whether the codicil, being void as an appointment, was also void as a revocation of the earlier appointment. *Held,* that the intention of the testatrix was not to revoke the prior appointment in any case, but only for the purpose of carrying out the altered appointment, and since the purpose of the revocation had failed, the revocation also failed. *In re Bernard's Settlement,* [1916] 1 Ch. 552, 85 L. J. Ch. 414.

Where a will or codicil is duly executed by a competent person, but its provisions cannot be given effect, as when void as a perpetuity, (*Altrock* v. *Vanderburgh,* 25 N. Y. Supp. 851), or a bequest to a charity which fails be-

cause of uncertainty, (*Dudley* v. *Gates,* 124 Mich. 440, 83 N. W. 97), or because not made a sufficient length of time before the death of the testator, (*Price* v. *Maxwell,* 28 Pa. 23), or if an appointment is made in excess of the power of the donee, (*Colvin* v. *Warford,* 20 Md. 357), the general rule is that a clause expressly revoking a prior will or provision is not affected by the failure of the disposition attempted to be made. *Tupper* v. *Tupper,* 1 Kay & J. 665; *Melville's Estate,* 245 Pa. 318, 91 Atl. 679, L. R. A. 1916 C. 98, and note. Where the revocation is not expressed, but merely implied from a provision in the later instrument which is inconsistent with the prior disposition, the revocation is only to such an extent as is necessary to give effect to the later provision, hence there is no revocation at all if the later provision is void. *Austin* v. *Oakes,* 117 N. Y. 577, 23 N. E. 193; *Eli* v. *Megie,* (N. Y. 1916), 113 N. E. 800, *semble*; *Duguid* v. *Fraser,* 31 Ch. D. 449, 55 L. J. Ch. 285. In the principal case, where the revocation was by express words, the court has advanced beyond the holding in *Duguid* v. *Fraser,* where the revocation was only by implication, and says: "It does not seem that the real point depends upon the question of whether there are words of direct revocation, or whether such words are absent." See also *Security Co.* v. *Snow,* 70 Conn. 288, 39 Atl. 153, which is in accord with the principal case, but stands alone in this country. The question in these cases must not be confused with the question in *Onions* v. *Tyrer,* 1 P. Wms. 343; *Rudy* v. *Ulrich,* 69 Pa. St. 177, and *Moore* v. *Rowlett,* 269 Ill. 88, 109 N. E. 682, L. R. A. 1916 C. 89, and note, where the subsequent provision fails because of a defect in the execution of the later instrument, or in the capacity of the person, when it is void in toto, hence a clause expressly revoking the prior instrument falls with the devise.

WILLS—POWER OF SALE GIVES NO POWER TO MORTGAGE.—It was provided in a will that the devisee of a life estate, the wife of the testator, had "the right to dispose of any property as she may think best for the purpose of paying all just debts or supporting or maintaining herself and children;" and under this power the widow executed a mortgage of the fee to the defendant. The children of the testator, who by the will were entitled to "the entire property remaining" at the death or marriage of the life-tenant, urge that the mortgage is not binding on their interest in the remainder. *Held,* that the mortgage in fee was void, since the power to sell did not include the power to mortgage, nor could she by sale or mortgage bind any interest in the estate except her own. *Sheffield* v. *Grieg,* (S. C. 1916) 89 S. E. 664.

That a mere power to one to sell does not include a power to mortgage, is the general rule, as followed in the instant case, especially if the one having the power is a mere agent or attorney. *Jeffrey* v. *Hursh,* 49 Mich. 31, 12 N. W. 898. The executor with "entire management and control," does not have power to make a mortgage, (*Price* v. *Courtney,* 89 Mo. 387, 56 Am. St. 453), nor can a trustee with power to sell and invest the proceeds, make a mortgage (*Hannah* v. *Carnahan,* 65 Mich. 601, 32 N. W. 835). The power of the devisee of a life estate to sell a fee was restricted so as not to include a power to mortgage by the application of the broad general rule, in *Hoyt*